

IN THE APPELLATE TRIBUNAL FOR ELECTRICITY
(Appellate Jurisdiction)

Court-1

**Appeal No. 220 of 2026 & IA No. 719 OF 2026 & IA No. 718 OF
2026 & IA No. 1051 OF 2026**

**Appeal No. 103 of 2026 & IA No. 432 OF 2026 & IA No. 434 OF
2026 & IA No. 858 OF 2026**

**Appeal No. 106 of 2026 & IA No. 444 OF 2026 & IA No. 445 OF
2026 & IA No. 836 OF 2026**

**Appeal No. 125 of 2026 & IA No. 509 OF 2026 & IA No. 511 OF
2026 AND**

**Appeal No. 110 of 2026 & IA No. 454 OF 2026 & IA No. 453 OF
2026 & IA No. 805 OF 2026**

Dated : 5th June, 2026

Present: Hon'ble Ms. Seema Gupta, Officiating Chairperson
Hon'ble Mr. Virender Bhat, Judicial Member

In the matter of:

**Appeal No. 220 of 2026 & IA No. 719 OF 2026 & IA No. 718 OF
2026 & IA No. 1051 OF 2026**

Diwakar Renewable & Infra Pvt. Ltd.

Through its Accounts Head & Authorised Signatory

Office 30 & 31A, 5th floor,

Mahima Trinity Mall, Swej Farm,

New Sanganer Road Jaipur – 302020

Email: project@diwakarsolar.com

... Appellant

Versus

1. Maharashtra Electricity Regulatory Commission

Through its Secretary

World Trade Centre, Centre No. 1,

13th Floor, Cuffe Parade,
Mumbai - 400005
Email: secretary@merc.gov.in

2. Maharashtra State Electricity Distribution Company Limited

Through its Chief Engineer (Renewable Energy)
5th Floor, Prakashgad, Plot No. G-9,
Anant Kanekar Marg, Bandra (E),
Mumbai – 400 051
Email: ceremsedcl@gmail.com

3. OPG Power Generation Pvt. Ltd.

Through its Managing Director
OPG Nagar, Periya Obulapuram Village,
Nagaraja Kandigai, Madharapakkam Road,
Gummidipoondi, Thiruvallur District,
Tamil Nadu – 601201
Email: balaji.r@opgpower.com

4. Mahati Industries Pvt. Ltd.

Through its Managing Director
32/33, Shankarsheth Road,
Pune-411037, Maharashtra
Email: info@mahati.com

5. ArMee Infotech Limited

Through its Managing Director
ArMee House, 17 Goyal Intercity Row House,
Thaltej Ahmedabad – 380054, Gujarat, India
Email: nirmalya@armee.in

6. Bhilwara Energy Ltd.

Through its Managing Director
Bhilwara Towers, A-12, Sector-1,
Noida, Uttar Pradesh – 201301
Email: Sharma.ankit@Injbhilwara.com

7. Patanjali Ayurved Ltd.

Through its Managing Director

Patanjali Food & Herbal Park,
Village – Padartha, Laksar Road, Haridwar,
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Swadha Sharma
for Res. 2

**Appeal No. 103 of 2026 & IA No. 432 OF 2026 & IA No. 434 OF
2026 & IA No. 858 OF 2026**

OPG Power Generation Pvt. Ltd.

Through its Assistant Manager
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Through its Managing Director
32/33, Shankarsheth Road,
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4. ArMee Infotech Limited

Through its Managing Director
ArMee House, 17 Goyal Intercity Row House,
Thaltej Ahmedabad – 380054, Gujarat, India
Email: nirmalya@armee.in

5. Diwakar Renewable & Infra Pvt. Ltd.

Through its Managing Director
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6. Bhilwara Energy Ltd.

Through its Chairman
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Email: Sharma.ankit@Injbhilwara.com

7. Patanjali Ayurved Ltd.

Through its Managing Director
Patanjali Food & Herbal Park,
Village – Padartha, Laksar Road, Haridwar,
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8. Onward Solar Power Private Limited

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Arpita Singh
Abhijeet Kumar Pandey
Siddharth Singh Chouhan
Apurbaa Dutta
For Res. 7

**Appeal No. 106 of 2026 & IA No. 444 OF 2026 & IA No. 445 OF
2026 & IA No. 836 OF 2026**

Onward Solar Power Private Limited

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For Res. 8

Appeal No. 125 of 2026 & IA No. 509 OF 2026 & IA No. 511 OF 2026

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for Res. 2

Simranjeet Singh
Rishabh Pant
Osheen Verma
Abhijeet Kumar Pandey
For Res. 7

**Appeal No. 110 of 2026 & IA No. 454 OF 2026 & IA No. 453 OF
2026 & IA No. 805 OF 2026**

Bhilwara Energy Ltd.

*Through its Authorised Representative-Rani Gupta
(General Manager & Company Secretary)*

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... Appellant

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Through its Managing Director
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Rishabh Pant
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Abhijeet Kumar Pandey
For Res. 8

J U D G M E N T

PER HON'BLE MR. VIRENDER BHAT, JUDICIAL MEMBER

1. All the above captioned five appeals arise out of the same order dated 6th March, 2026 passed by the 1st Respondent – Maharashtra Electricity Regulatory Commission (hereinafter referred to as “the Commission”) and involve identical issues. Therefore, these are being disposed of vide this common judgement.

2. At the outset, we may note that initially we had commenced hearing on the interim applications filed in these appeals by the Appellants. However, during the course of arguments on those applications, it was submitted by the Learned Counsels for the parties that arguments to be advanced on interim applications are absolutely identical to the arguments to be advanced for the final disposal of the appeals and suggestion was made to take up the appeals for final disposal at this stage itself instead of deciding only the interim applications. Accordingly, on such suggestion and with the consent of all the Learned Counsels, we have heard arguments on the main appeals and are hereby proceeding for to dispose off the appeals finally vide this judgement.

3. The Appellants are aggrieved by the said order dated 6th March, 2026 passed by the Commission in case No. 246 of 2025 filed by the 2nd Respondent – Maharashtra State Electricity Distribution Company

Ltd. (in short “MSEDCL”) thereby adopting the tariff for procurement of capacity from 2000 MW/ 4000 MWh (one cycle) Battery Energy Storage System (in short BESS) through competitive bidding process with Viability Gap Funding (in short “VGF”) from Power System Development Fund (in short “PSDF”) for a period of 15 years.

Description of the Parties :-

4. M/s. OPG Power Generation Private Limited, M/s Mahati Industries Private Limited and M/s Diwakar Renewable and Infra Private Limited, the Appellants in Appeal Nos. 103 of 2026, 125 of 2026 and 220 of 2026 respectively are the generating companies. They had submitted their bids for 900 MW/1800 MWh, 200 MW/400 MWh and 50 MW/100 MWh capacity respectively.

5. M/s Onward Solar Power Pvt. Ltd., Appellant in Appeal No. 106 of 2026 is engaged in the business of development of renewable energy projects including solar and associated storage projects including BESS. It had submitted its bid for 50MW/100MWh capacity. With regards to this Appellant, it is relevant to note that on 7th March, 2026 i.e. one day prior to the passing of the impugned order dated 8th March, 2026 by the Commission, it had filed additional written submission before the Commission thereby seeking to withdraw the

offer to take up any capacity under the tender in question. However, the impugned order does not mention anything about the said offer of this Appellant.

6. M/s Bhilwara Energy Limited, Appellant in Appeal No. 110 of 2026 is engaged in the business of power generation and energy storage. It has submitted its bid for 500 MW/1000MWh capacity.

7. Respondent No. 2 – MSEDCL is an entity involved in the business of distribution of electricity to its consumers in the State of Maharashtra. The other respondents arrayed in these appeals are the stake holders/bidders who participated in the bidding process.

Brief conspectus of the facts of the case

8. The facts and circumstances leading to the filing of the instant appeals by the Appellants have been encapsulated in the following list of dates and events.

LIST OF DATES

Date	Event
10.03.2022	Ministry of Power (MoP), Government of India announced the “Policy for Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of

	<p>Generation, Transmission and Distribution assets, along with Ancillary Services” to facilitate procurement of BESS as part of individual RE power projects or separately, for addressing the variability/firming power supply / increasing energy output / extending the time of supply from an individual RE project or a portfolio of RE projects, augmentation of existing RE Projects and/or to provide ancillary, grid support and flexibility services for the grid.</p>
09.06.2025	<p>Ministry of Power (MoP), Government of India, issued the Viability Gap Funding (VGF) Scheme, wherein the developers of Battery Energy Storage Systems (BESS) are entitled to a funding of up to ₹18 lakh per MWh, alongwith the subsequent amendment dated 04.08.2025. As per Clause 2.5 of the VGF Scheme, the battery system has to have 2-hour discharge duration and average 1.5 cycles in a day/ 24 hours. However, the said provision further mandated that the eligible entity/ distribution licensee such as MSEDCL can vary the above configuration qua both, the discharge duration and number of cycles.</p>

25.07.2025	MSEDCL issued the Request for Selection dated 25.07.2025 and floated a tender for procurement of storage capacity from 2000 MW/ 4000 MWh (2 cycle) Batter Energy Storage System (BESS) through competitive bidding process with VGF support from PSDF.
25.07.2025	An addendum dated 25.07.2025 was issued by MSEDCL for conducting a pre-bid meeting on 14.08.2025.
07.09.2025	Addendum 2 dated 07.09.2025 was issued by MSEDCL to the stakeholders, thereby changing the project configuration i.e., setting up of BESS for 2000 MW/ 4000 MWh (2 cycles) to 1 Cycle.
17.09.2025	Addendum No. 3 dated 17.09.2025, the Project configuration for the Project was changed and the changes were incorporated in the RfS.
23.09.2025 and 25.09.2025	Appellants, participated in the bidding process floated by the 2 nd Respondent for setting up 2000 MW/4000 MWh of BESS Capacity.

	Furthermore, in terms of the conditions of the RfS, the Appellants submitted requisite Bank Guarantees also to MSEDCL.
29.09.2025	Addendum No. 4 was issued by MSEDCL amended Clause 9.1.5 of the RfS and Clause 4.4.2.4 of the Batter Energy Storage Supply Agreement (BESPA), whereby annual degradation was expressly permitted. Further, the above Clause was amended to acknowledge battery degradation and provided a minimum dispatchable energy by the end of each contract period, and the requirement to augment or replace the battery system was deleted.
30.09.2025	Vide Addendum No. 5 dated 30.09.2025, Clause 4.4.2.4 of the RFS was revised, wherein the values/ percentage for consideration of capacity degradation of the minimum Dispatchable energy to be made available by the BESSD at the end of a given year was revised to cover the entire intended contract period of 15 years.
09.10.2025	Vide Addendum No. 6 dated 09.10.2025, MSEDCL revised the last date for submissions technical and financial bids.

17.10.2025	Further, vide Addendum No. 7 dated 17.10.2025, MSEDCL informed the stakeholders of revision in the billing methodology for existing projects where co-located BESS will be installed and withdrawing the condition mandating DC – coupled BESS for co-location existing solar projects.
25.10.2025	The last date of submissions of technical and financial bids was again revised by MSEDCL vide Addendum No. 8 dated 25.10.2025.
Nov, 2025	Appellants submitted their respective bids.
04.12.2025	MSEDCL filed a petition seeking approval on adoption of tariff for procurement of storage capacity from 2000 MW/ 4000 MWh (1 Cycle) battery energy storage system through competitive bidding process (with VGF support PSDF) under Section 63 of EA 2003 for meeting renewable purchase obligation (RPO) before the Respondent Commission.
31.12.2025	Since, as per Clause 2.5 of the VGF Scheme of the MoP, the battery system has to have 2-hour discharge duration and average 1.5 cycles in a day/ 24 hours, and

	<p>that the said provision further mandated that the eligible entity/ distribution licensee such as MSEDCL can vary the above configuration qua both, the discharge duration and number of cycles, MSEDCL issued a letter dated 26.12.2025 to the MoP seeking approval of the above deviation from 1.5 cycles to single cycle.</p> <p>In response to the above letter, MoP issued a letter dated 31.12.2025 wherein it stated that MSEDCL ought to retain the contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost.</p>
06.03.2026	<p>Respondent Commission passed the impugned order on 06.03.2026, wherein it held as under:</p> <p>i. In terms of Section 63 of the Electricity Act (“EA 2003”), Respondent No. 2 viz. has conducted the Bidding Process in accordance with “Guidelines for Procurement and Utilization of Battery Energy Storage Systems as part of Generation, Transmission and Distribution assets, along with Ancillary</p>

	<p>Services” issued by the Ministry of Power (MOP) for procurement of 2000 MW/4000 MWh BESS;</p> <p>ii. The reference to 6300 lifecycle cycles was only a clarification in the context of VGF eligibility and did not constitute a mandatory change in the operational requirements under the Request for Selection dated 25.07.2025 (“RFS”);</p> <p>iii. MSEDCL’s proposal for procurement of storage capacity 2000 MW/4000 MWh (1 Cycle/day) Battery Energy Storage System through Competitive Bidding Process at a tariff of Rs. 1,65,998/- per MW per month for 15 years is approved.</p> <p>Letters of Award (LoAs) would be issued by MSEDCL after tariff adoption, and that the Battery Energy Storage Purchase Agreements (BESPA) would be executed with the selected bidders within a period of 15 days from the date of the order in accordance with the RfS and the adopted tariff.</p>
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March, 2026	MSEDCL issued LOAs to the Appellants, thereby awarding the contract capacity to them for a period of 15 years at Rs. 1,65,998/- (in INR/MW/Month).
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9. According to the Appellants, stipulation in the letter dated 31st December, 2025 issued by Ministry of Power, Govt. of India to 2nd Respondent – MSEDCL after the submission of financial bids, asking MSEDCL to retain contractual right of BESS for at least 6300 cycles during the contract period without any additional cost, vitiates the entire bidding process as the said stipulation is contrary to the relevant clauses of the Request for Selection (RFS) dated 25th July, 2025 issued by MSEDCL as well as the addendum to the same issued subsequently. It is also their grievance that the Commission, in the impugned order, has failed to clarify the actual tariff which MSEDCL is liable to pay to the successful bidders.

10. We have heard Mr. Sajan Poovayya, Learned Senior Counsel, Mr. Vishrov Mukherji, Learned Counsel, Mr. Hemant Singh, Learned Counsel and Ms. Manish Priyadarshi, Learned Counsel for the Appellants and Mr. B.P. Patil, Learned Senior Counsel along with

Ms. Pratiti Rungta, Learned Counsel for the 2nd Respondent –
MSEDCL.

Our Analysis :-

11. Ministry of Power, Govt. of India issued a VGF scheme on 9th July, 2025 whereunder the developers of BESS are entitled upto Rs.18 lakhs per MWh. Clause 2.5 of the scheme is relevant and is extracted herein below:-

“2.5 Storage Duration : The BESS capacity should preferably be with 2-hour discharge duration and average 1.5 cycles in a day i.e. within 24 hour period. However, the Eligible Entity may vary the duration, no of cycles as required.”

12. Thus, as per said clause the battery system ought to have two hour discharge duration with average 1.5 cycles in a day/ 24 hours. The clause further authorized the eligible entity/distribution licensee i.e. MSEDCL to vary the duration/number of cycles as per its requirement.

13. MSEDCL issued RFS on 25th July, 2025 and floated tender for procurement of storage capacity from 2000 MW/4000 MWh (two

cycle) BESS through the competitive bidding process with VGF support from PSDF. Clause 1.2 of the RFS indicates that proposals were invited by MSEDCL for setting up BESS with double storage capacity of 2000 MW/4000 MWh (two hour discharge, two cycle per day). This would mean that there would be 5475 cycles during the contract period of 15 years and in case the successful bidders are able to achieve the same they would be entitled to VGF. For the sake of reference, the said clause 1.2 of RFS is extracted herein below:-

“1.2 Under this RfS, the BESSD shall be required to set up a Battery Energy Storage System (BESS), with the primary objective of making the energy storage facility available to MSEDCL for charging/discharging of the BESS, on an “on demand” basis. MSEDCL seeks to utilize energy storage systems, on a “On-Demand” basis, suited to the requirements of the State DISCOMs during the peak and off-peak hours.

In view of the above, MSEDCL invites proposals for setting up Battery Energy Storage Systems (BESS), connected to

the STU, with a total storage capacity of 2000 MW/4000MWh (2 hour discharge, 2 cycles per day).”

14. Clause 6.1 of the RFS provides that the selected developers were eligible for financial support under VGF scheme with maximum VGF of Rs.18 lakhs per MWh in accordance with the guidelines issued by Ministry of Power, Govt. of India dated 9th June, 2025. It further requires the eligible bidder to submit the Bank Guarantee of value equal to the eligible VGF, prior to its release to the developer which would be liable for encashment in the event of non-fulfillment of scheme conditions specified in the bidding documents.

15. Clause 9.1(5) of RFS provides that successful bidder has to ensure the contracted capacity throughout the contractual period by compensating for any degradation, augmentation or replacing so that the contracted energy remains unaffected. Thus, while quoting the financial bids, the bidders have to factor in the required battery augmentations to take care of the battery degradation.

16. Thereafter, addendum No. 2 to RFS was issued by MSEDCL on 7th September, 2025 thereby changing the project configuration i.e. setting up of BSES for 2000 MW/4000MWh (two cycles) to 2000 MW to 4000 MWh (one cycle).

17. On 29th September, 2025, addendum No. 4 to RFS was issued by MSEDCL thereby revising the last date for submission of technical and financial bids to 10th October, 2025 and further amending clause 9.1.5 as well as clause 4.4.2.4 of the draft Battery Energy Storage Purchase Agreement (BESPA). The amendments were incorporated in the RFS as well as BESPA to acknowledge battery degradation and to provide a minimum dispatchable energy by the end of each contract period and the requirement to augment or replace the battery system was deleted. However, the provision for entitlement of the successful bidder for fixed capacity charges remained unchanged meaning thereby that the successful bidder would be entitled to the quoted fixed capacity charge in INR/MW/month with respect to original allocated/contracted battery capacity irrespective of battery degradation.

18. Clause 4.4.2.4 of BESPA was revised again vide addendum No. 5 of 30th September, 2025 wherein the values/percentage for consideration of capacity degradation of the minimum dispatchable energy to be made available by the BESS developers at the end of given year was revised to cover the entire intended contract period of 15 years.

19. The last date for submission of technical and financial bids was revised vide addendum No. 6 of 9th October, 2025 and vide addendum No. 7 dated 17th October, 2025, the stake holders were intimated about the revision in billing methodology for existing projects where co-located Battery Energy Storage System will be installed and withdrawing the condition mandating DC-coupled BESS for co-location existing solar projects.

20. The last date for submission of technical and financial bids was again revised vide addendum No. 8 dated 25th October, 2025 to 31/10/2025. As per this addendum, the technical bids were to be opened on 03.11.2025.

21. Accordingly, bearing these terms and conditions of the RFS in mind, the Appellants participated in the bidding process floated by the MSEDCL for setting up of the BESS capacity and also submitted the requisite Bank Guarantees.

22. Technical Bids were opened on 3rd November, 2025 and it was found that 46 entities had submitted their bids for an aggregate capacity of 11,110 MW/22,220 MWh which was far exceeding the tendered capacity. Subsequently, financial bids were opened on 4th November, 2025. In accordance with the RfS clause disqualifying

bidders quoting the highest effective capacity charges when more than five bids are received, two bidders were disqualified. Reverse e-auction was conducted on 5th November, 2025 under L1 methodology to discover the lowest tariff.

23. Lowest tariff discovered under part -A was Rs.1,65,998/- per MW per month while under part-B it was Rs.1,76,100 per MW per month . Since part-B tariff was significantly higher and the bidders declined to match the part-A L1 rate, entire 500 MW under part-B was cancelled and merged into part-A, revising part-A capacity to 2000 MW. It appears that after the auction, the additional bidders including the Appellants requested L1 matching by way of emails but only 1200 MW was accommodated based on chronological order on receipt and eligibility verification.

24. Accordingly, the final allocation was made under Part-A aggregating to 2000 MW/4000 MWh at the discovered lowest tariff of Rs.1,65,998/- per MW per month.

25. Thereafter, the 2nd Respondent – MSEDCL approached the Commission by way of petition No. 246 of 2025 seeking approval of the discovered tariff and adoption of competitive bidding outcome for procurement of said BESS capacity as under :-

Sr. No.	Bidder Name	Capacity in MW			Bid Offer in	Guranteed Round-trip Efficiency (RtE)	Effective Capacity charges payable to the bidder in
		As per e-RA	As per L1 matching	Total capacity			
1	Mahati Industries Private Limited	100	100	200	1,65,998	0.85	1,65,998
2	Armee Infotech Limited	150	0	150	1,65,998	0.85	1,65,998
3	Diwakar Renewable & Infra Pvt. Ltd.	50	0	50	1,65,998	0.85	1,65,998
4	Bhilwara Energy Limited	500	200	700	1,65,998	0.85	1,65,998
5	OPG Power Generation Private Ltd.	0	800	800	1,65,998	0.85	1,65,998
6	Patanjali Ayurved Limited	0	100	100	1,65,998	0.85	1,65,998
Total (Part-A) ➔				2000			

26. The petition was disposed off by the Commission vide impugned order dated 6th March, 2026 thereby approving the proposal of MSEDCL for procurement of storage capacity 2000 MW/ 4000 MWh (one cycle per day) Battery Energy Storage System through competitive bidding process at a tariff of Rs.1,65,998 per MW per month for 15 years. The impugned order further provides that MSEDCL shall execute Battery Energy Storage Purchase Agreement (BESPA) with the successful bidder within 15 days from the date of order.

27. It is pertinent to note here that during the pendency of the petition before the Commission, MSEDCL appears to have realized that as per clause 2.5 of the VGF scheme of the Ministry of Power, Government of India, the battery system has to have two hour discharge duration and average 1.5 cycles in a day/24 hours and this clause further authorized the eligible entity/distribution licensee i.e. MSEDCL to vary the above configuration qua both in the discharge duration as well as number of cycles, it accordingly issued a letter dated 26th November, 2025 to Ministry of Power seeking approval of the above deviation from 1.5 cycle to single cycle. In response to the same, Ministry of Power, Government of India issued letter dated 31st December, 2025 wherein it concurred with the request of MSEDCL for change of number of cycles from 1.5 cycles per day to 1 cycle per day subject to the condition that MSEDCL should retain the contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost. Since the grievance of the Appellants in these appeals is founded upon the said letter of Ministry of Power, Government of India, we find it apposite to extract its contents hereunder :-

*"F.No. 48-15/24/2025-NRE SECTION
Government of India
Ministry of Power
(NRE Section)*

*Shram Shakti Bhawan
Rafi Marg, New Delhi-110001
Dated the 31st Dec. 2025*

To

*Chief Engineer (RE),
MSEDCL.*

Subject: Request for approval regarding revision of cycles in 2000 MW/ 4000 MWh BESS project to be set up in Maharashtra under the VGF Scheme supported through PSDF - reg.

(Ref: MSEDCL letter No. CE/RE/BESS/MoP No. 42176)

Sir,

I am directed to refer to MSEDCL's letter dated 26.12.2025 on the above subject and to convey that the request made regarding deviation from existing guidelines to operate from 1.5 cycles to single-cycle per day operation for the 2,000 MW / 4,000 MWh BESS project being implemented by MSEDCL under the VGF scheme supported through PSDF has been concurred by the Ministry subject to the condition that MSEDCL, the procurer, should retain the contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost.

This issues with the approval of competent authority.

Yours faithfully,

(Vishal Kumar)
Under Secretary to the Government of India,
Email: usnre-mop@gov.in

Copy to:

- 1. Chairperson, CEA.*
- 2. Principal Secretary (Energy), Govt. of Maharashtra.*
- 3. CMD, MSEDCL*
- 4. CMD, Grid India”*

28. It is argued on behalf of the Appellants that the said letter issued by Ministry of Power, Government of India makes their financial bids unviable for the reason that the letter was issued much after the submission of technical/financial bids by the bidders and imposed an obligation upon the bidders to upgrade BESS for 6300 cycles during the contract period which is contrary to what was proposed in the RfS as well as in draft BESP. It is submitted that such additional obligation does not leave any sanctity to the quoted tariff in the bids as the same was quoted for single cycle per day.

29. The discussion of the Commission in the impugned order with regards to the said letter dated 31st December, 2025 issued by Ministry of Power, Government of India and the objections raised in this regard by the Appellant is extracted herein below :-

“25. Issue (4): Increase in operating cycles.

25.1. Respondents and Intervener strongly opposed the enhancement of the lifecycle requirement from 5,475 cycles (1 cycle per day over 15 years) to approximately 6,300 cycles, pursuant to the Ministry of Power's letter dated 31 December 2025. It is contended that RfS and the bidding documents clearly contemplated the operation of the BESS at one cycle per day over a 15-year contract period, which formed the basis for bid structuring. Accordingly, bidders factored in battery degradation, lifecycle performance, augmentation planning, and financing assumptions. Any post-bidding increase in minimum cycles during the contract period should alter the technical and financial assumptions of the bid, and the same should not be allowed.

25.2. MSEDCL, in its reply on this issue, clarified that RFS explicitly envisaged BESS projects with two hours of discharge and one cycle per day. Bid conditions and terms of the RfS remain unchanged. Regarding the 6300-cycle

reference, it is from MoP's letter dated 31 December 2025, in which the MoP clarified that it is a contractual right (not a mandatory obligation) to use BESS for at least 6300 cycles during the contract period. Therefore, there is no merit to the concerns raised by concerned bidders on this issue. Additionally, the condition mentioned pertains to VGF eligibility and is not part of the current proceedings.

25.3. In this regard, the Commission notes that the present bidding process for 2000MW/4000MWh has clearly specified 1 cycle/day and viability gap funding through PSDF. The Commission, in its earlier Order dated 31 December 2025, has approved the RfS with these conditions. Considering a 15-year contract period, 6300 cycles over that period exceed the 1 cycle/day stipulation in the RfS. On perusal of MoP's letter dated 31 December 2025, it is observed that said letter was in reply to MSEDCL's proposal to consider 1 cycle/day, which is in line with the RfS document. Relevant part of the MoP letter is reproduced below:

"I am directed to refer to MSEDCL's letter dated 26.12.2025 on the above subject and to convey that the request made regarding deviation from existing guidelines to operate from 1.5 cycles to single-cycle per day operation for the 2,000 MW/4,000 MWh BESS project being implemented by MSEDCL under the VGF scheme supported through PSDF has been concurred by the Ministry subject to the condition that MSEDCL, the procurer, should retain the contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost."

Thus, while allowing MSEDCL's request for single-cycle-per-day operation of BESS, MOP has imposed a condition that MSEDCL retain the contractual right to use BESS for at least 6300 cycles during the contract period. MSEDCL, in its reply, has stated that such contractual rights should not be considered mandatory obligations for bidders, and hence, there is no change to the RfS conditions.

25.4. The above MoP letter is related to VGF funding under PSDF. Respondents have apprehension about the non-availability of VGF if they do not meet the 6300 cycles condition, and their quoted tariff becomes financially unviable. Had MSEDCL received such clarification before the bid submission, bidders would have had the opportunity to appropriately factor this condition into their financial calculations. Now, after the bidding process, imposing such a new condition would vitiate the bidding process itself. MSEDCL also would not like to do so, considering the urgent need of BESS to manage the increasing penetration of RE sources, and hence, in its Reply, MSEDCL has clearly stated that there is no change in the RfS condition, and the condition of 6300 cycles is just a contractual provision and will not be obligatory on successful bidders. By relying on MSEDCL's submission, the Commission rules that there is no change to the RfS condition for a single cycle per day; accordingly, the tariff adopted above will remain the same. The Commission also directs MSEDCL to extend all its support to successful

bidders complying with RfS conditions to avail VGF under PSDF.”

30. Learned Counsel appearing for the Appellants vehemently argued that the letter dated 31st December, 2025 issued by Ministry of Power, Government of India effectively changed the substantial part of the RfS, which the bidders could not have factored at the time of submitting of the bids and the Commission failed to consider that even if MSEDCL does not insist for 6300 cycles during the contract period and accepts single cycle per day under the BESP (i.e. 5475 cycles during contract period), the successful bidders will not be eligible for VGF from the Ministry of power. It is submitted that the same goes to the root of the financial bids submitted by the bidders including the Appellants as without the VGF support the tariff quoted has become unviable due to introduction of above condition.

31. On the other hand, it is argued on behalf of MSEDCL that the contents of the letter dated 31st December, 2025 issued by Ministry of Power, Government of India do not explicitly or impliedly changed the bid conditions and terms stated in the RfS which have to be complied with by the successful bidders including the Appellants.

32. With regards to the retention of contractual rate to use BESS for at least 6300 cycles during the contract period, as envisaged in the letter dated 31st December, 2025 of Ministry of Power, it is submitted that the letter does not make it mandatory for the bidders to use BESS for at least 6300 cycles during the contract period and it is only a contractual right conferred upon MSEDCL. It is argued that allocation of capacities to the successful bidders is governed by the terms and conditions contained in the RfS as well as BESP, which have remained unchanged and, therefore, the grievance of the Appellants in these appeals is baseless and after thought.

33. During the course of hearing of the appeals, Learned Senior Counsel appearing for MSEDCL produced a copy of communication dated 9th February, 2026 sent in this regard by Ministry of Power, Government of India to the Chairman, UPPCL (Uttar Pradesh Power Corporation Limited) wherein it has been clarified as under :-

“3. It is further clarified that commercially available LFP batteries currently offer a cycle life of approximately 8,000 cycles. Under a single-cycle-per-day operating regime, only about 4,200 cycles would be utilised over a 12-year contract period, leading to sub-optimal utilisation of the

asset despite payment of the full cost. Accordingly, it was suggested that the State/UPPCL shall retain the contractual right to utilise at least 6,300 cycles during the project tenure, thereby enabling flexibility to address any additional operational requirements that may arise during the contract period. However, this provision confers only a right and does not mandate UPPCL to utilise 6,300 cycles.”

34. It is further submitted that vide communication dated 2nd March, 2026 sent in this regard by the Ministry of Power, Government of India to Chief Engineer (Commercial), MSEDCL, reference has been made to above noted communication dated 9th February, 2026 addressed to Chairman, UPPCL to state that the clarification issued to UPPCL regarding retention of contractual right for utilization of at least 6300 cycles of BESS during the contract period is applicable to MSEDCL also. The relevant portion of the said letter is extracted hereinbelow:-

“2. It is informed that Ministry of power, vide letter dated 09.02.2026, issued a clarification to UPPCL regarding retention of the contractual right for utilization of at least 6300 cycles of the BESS during the contract period, with a copy endorsed to CMD, MSEDCL. Accordingly, the

clarification issued to UPPCL is also applicable to MSEDCL.”

35. Learned Senior Counsel would, accordingly, submit that with the clarification issued by Ministry of power itself, the apprehensions raised by the Appellant that they may not get VGF support in case they don't achieve 6300 cycles during the contract period vanish in thin air and do not survive at all.

36. Further, the Learned Senior Counsel appearing for MSEDCL also sought to allay the apprehensions of the Appellants with regard to their inability to receive VGF in case they are unable to achieve 6300 cycles during the contract period, by saying that in case the Ministry of power does not provide the VGF support to the Appellants, MSEDCL undertakes to do so on its own. He produced a print out of email dated 29th May, 2026 sent in this regard by Chief Engineer, Renewable Energy , MSEDCL to Advocate, Vishal Binod representing MSEDCL wherein it is stated as under :-

“1. MSEDCL humbly submits that it has received appropriate clarifications from Ministry of power that the BESSDs will be eligible for grant of VGF under MoP's

VGF Scheme notwithstanding the fact that the RfS and the Draft BESPAs mandate a single cycle per day supply (equivalent to 5475 cycles over the 15 years BESPAs term) as opposed to 6300 cycles, subject to the BESSDs fulfilling other applicable conditions of the VGF scheme and as per the provisions of RfS & BESPAs.

2. Without prejudice to the aforesaid submission, MSEDCL undertakes that it will pay the applicable VGF amount to the BESSDs (subject to fulfilment of other conditions of the VGF scheme and as per the provisions of RfS & BESPAs) in case such VGF is denied by MoP solely on the ground that the BESSDs are not required to operate 6300 cycles over the BESPAs term. It is clarified that MSEDCL shall not be liable to pay any VGF in case the BESSD is deemed ineligible to claim VGF for any other reason whatsoever.”

37. It is, thus, the submission of the Learned Senior Counsel that the primary grievance of the Appellants raised in these appeals has been taken care of and, therefore, there is now no impediment in their way in executing BESPAs.

38. We are unable to countenance the submissions made by the Learned Senior Counsel for the 2nd Respondent – MSEDCL. Concededly, as per the RfS document issued by the MSEDCL as amended vide addendum No. 2 dated 7th September, 2025, proposals were invited for setting up of BESS with total discharge capacity of 2000 MW/4000 MWh having two hour discharge duration with average 1 cycle per day. This would indicate that there would be 5475 cycles during the contract period of 15 years and in case successful bidders are able to achieve the same, they would be entitled to VGF up to Rs.18 lakhs per MWh as per VGF scheme issued by Ministry of Power, Government of India on 9th June, 2025. However, the contentious communication dated 31st December, 2025 addressed by Ministry of Power, Government of India to Chief Engineer, MSEDCL, the contents of which have been extracted in paragraph No. 27 herein above, mandates MSEDCL to retain the contractual right the use BESS for at least 6300 cycles during the contract period without any additional cost.

39. Notably, the said communication dated 31st December, 2025 of the Ministry of power has come much after the last date for submission of technical/financial bids which was 3rd November, 2025.

Even the draft BESPAs circulated amongst the bidders provides in Article 4.4.1 that during a day in a contract year, the developer of BESS shall not be asked as well as the developer shall not be allowed the schedule for more than 1 cycle per day.

40. What is evident is that the bidders including the Appellants submitted their technical as well as financial bids with the impression that they would neither be required nor asked to schedule charging of BESS for more than one cycle per day aggregating to 5475 cycles during the contract period of 15 years. Despite such stipulations in the RfS document as well as in the draft BESPAs, the letter dated 31st December, 2025 of Ministry of power has mandated MSEDCL to retain its contractual right to use BESS for at least 6300 cycles during the contract period without any additional cost. The language of the said letter clearly reveals that the Ministry of power approved the revision of cycles from 1.5 cycles per day to single cycle per day for 2000 MW/4000MWh BESS project subject to the condition that MSEDCL shall retain the contractual right to use BESS for at least 6300 cycles during the contract period. Therefore, it is a conditional approval only and in case MSEDCL violates the condition, the approval given by the Ministry of power for revision of cycles would

become otiose. MSEDCL has no other option except to incorporate a clause in the contract i.e. BESPAs to the effect that BESS may be used for at least 6300 cycles during the contract period. Once that is done and such a clause is incorporated in the BESPAs to be executed with the successful bidders including the Appellants, there is no guarantee that the MSEDCL would not exercise this right during any year in the contract period. In case, for whatever reasons, MSEDCL chooses to exercise its right to use BESS for at least 6300 cycles during the contract period, it would not only be detrimental to the rights and expectations of the Appellants but also contrary to the terms and conditions of the RfS document upon which the Appellants submitted their bids. No undertaking has come on record on behalf of MSEDCL that such a clause would not be incorporated in the BESPAs.

41. Manifestly, this letter introduces a new condition and as well as requirement for the successful bidders to use BESS for at least 6300 cycles during the contract period which is contrary to the terms and conditions contained in the RfS document as well as draft BESPAs in this regard. Such requirement is a clear deviation from the obligations cast upon the bidders in the RfS document and therefore, is not permissible. It is a trite law that goal post cannot be re-arranged are

asked to be re-arranged after the bidding process is complete to the prejudice of the rights of the bidders. Once the bidding process is complete i.e. after the evaluation of technical/commercial bids lowest tariff is discovered and the petition is filed before the Commission for adoption of tariff, it is not open for the procurer i.e. MSEDCL to change the number of cycles to be achieved by the successful bidders per day.

42. The apprehension of the Appellants i.e. in case they are unable to achieve 6300 cycles during the contract period of 15 years they would not get VGF support, is not ill-founded. Such apprehension stems out of the clear stipulation in the letter dated 31st December, 2025 of the Ministry of power mandating MSEDCL to retain contractual right to use BESS for at least 6300 cycles during the contract period. Once such right is retained by MSEDCL by incorporating a clause in the contract i.e. BESPAs, it can be exercised by MSEDCL at any point of time during the contract period. In case MSEDCL, at any point of time during the contract period of 15 years, choose to enforce said clause of BESPAs and the Appellants would not be able to achieve the minimum threshold of 6300 cycles, the

consequences of not achieving the same would fall on Appellant which can include refund of VGF support so received.

43. The said letter of Ministry of power effectively changes the substantial as well as essential requirement under the RfS document which the bidders could not have factored in at all at the time of submitting the bids. The Appellants would not only have to incur additional expenditure to upgrade the BESS for achieving 6300 cycles without having any right to seek enhancement in the discovered tariff on account of such additional expenditure or face consequences, which may include return of VGF support obtained from Ministry of power in case they fail to achieve such number of cycles during the contract period.

44. We do not feel impressed by the submission on behalf of the MSEDCL that the clarifications issued by Ministry of power vide communication dated 9th February, 2026 to Chairman, UPPCL and dated 2nd March, 2026 to Chief Engineer (Commercial) MSEDCL allays the apprehensions of the Appellants as it has been clarified in this communications that only a right is conferred upon MSEDCL to utilize at least 6300 cycles of BESS during the project tenure and does not mandate MSEDCL to do the same. Once the MSEDCL is

mandated to retain the contractual right to utilize at least 6300 cycles during the contract period, such term in the contract may be enforced by MSEDCL any time during the contract period e.g. in the 2nd year, 3rd year or 4th year and so on. These communications nowhere say that clause regarding utilization of BESS for atleast 6300 cycles would never be enforced or the successful bidders would not be deprived of VGF support or to face consequences in case they do not achieve 6300 cycles during the contract period.

45. With regards to the undertaking on behalf of MSEDCL to compensate the Appellants in case they are not provided VGF support by the Govt. of India, as conveyed by the Learned Senior Counsel for MSEDCL during the course of arguments, it would be suffice to say that neither can any sanctity be attached to such undertaking nor is the same enforceable. This undertaking has been made by the Learned Senior Counsel on the basis of email received from Chief Engineer (Renewable Energy) MSEDCL who, apparently, is not the decision making authority in this regard. There is nothing to show in this email that the Board of Directors of MSEDCL has consented and supported such offer. Further, there ought to have been regulatory approval also for such huge spending by the

MSEDCL without which it would be unable to recover the same from consumers. Evidently, no such regulatory approval has been taken for the same.

46. We are of the considered opinion that change in the number of cycles to be achieved by a successful bidder introduced by way of letter dated 31st December, 2025 of the Ministry of Power, Government of India tantamounts to a clear deviation from the terms and conditions of the RfS document as well as draft BESPAs and the same having been communicated much after the submission of technical/commercial bids by the bidders, vitiates the entire bidding process.

47. It is true that no alteration has been actually carried out in the terms and conditions of the RfS document on the basis of which bids were submitted by the Appellants but it is equally true that incorporation of a new clause in the BESPAs to the effect that MSEDCL would have right to use BESS for at least 6300 cycles during the contract period, would impliedly tantamount to change in the terms and conditions of the RfS document which invited proposals for setting up of BESS with total discharge capacity of 2000 MW/4000 MWh with average one cycle per day. Ever though, there would be

no explicit change in the terms and conditions of the RfS document yet, by virtue of such clause in BESP, MSEDCL may chose to exercise its right to use BESS for minimum 6300 cycles during the contract period which would not only put the Appellants in a detrimental position but also would be in contravention of the terms and conditions of the RfS document. As such this would manifestly tantamount to changing the rules of the game after the game has commenced which is not permissible.

48. The clarification issued by Ministry of power vide communication dated 9th February, 2026 sent to Chairman, UPPCL and reiterated a communication dated 2nd March, 2026 send to Chief Engineer, MSEDCL does not come to the aid of MSEDCL at all. To the contrary, such clarification and the reasons for the same, advance the case of the Appellants. In these communications, Ministry of power has clarified that under single cycle per day operating regime, only the 4200 cycles would be utilized over the 12 year contract period leading to sub-optimal utilization of the asset despite payment of full cost and accordingly mandated UPPCL as well as MSEDCL to retain contractual right to utilize the asset for atleast 6300 cycles during the project tenure. This is indicative of the fact that if, at any

point during the project tenure, Ministry of power or MSEDCL finds that the asset is not being utilized to its full potential, the developers of BESS i.e. the Appellants would be mandated to utilize the same for atleast 6300 cycles during the contract period with no additional costs. As a sequitur, in case, the Appellants would not be able to achieve 6300 cycles during the contract period, they would either be deprived of the VGF support as promised by the Ministry of power in VGF guidelines or face consequences.

49. The Commission, while passing the impugned order, has overlooked these possible scenarios which were not only be prejudicial to the rights and interests of the Appellants but also contrary to the terms and conditions of the RfS document. Therefore, we are unable to sustain the impugned order of the Commission. The tariff discovered under the bidding process ought not to have been approved vide the impugned order by the Commission as the bidding process had got vitiated by introduction of a new condition much after the completion of the bidding process.

50. Hence, we hereby set aside the impugned order and quash the bidding process. The letters of Intent (LOI), if any, issued to the Appellants in pursuance to the acceptance of their bids are also

quashed. We direct MSEDCL to return the security deposit to the Appellants within four weeks from the date of the receipt of this judgement. The Bank Guarantees submitted by the Appellants be also returned within the same period.

51. All the appeals stand allowed in these terms.

Pronounced in the open court on this 5th June day of June, 2026.

(Virender Bhat)
Judicial Member

(Seema Gupta)
Officiating Chairperson

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REPORTABLE / NON-REPORTABLE

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